



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MARCH 22, 2023

IN THE MATTER OF:

Appeal Board No. 627279

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board No. 627276, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed December 27, 2022, insofar as they modified the initial determination holding the claimant ineligible to receive benefits, effective March 23, 2020 through September 12, 2021, on the basis that the claimant was not totally unemployed, to be effective March 23, 2020 through March 21, 2021 only.

In Appeal Board No. 627277, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed December 27, 2022, insofar as they modified the initial determination charging the claimant with an overpayment of \$17,793.75 in regular benefits recoverable pursuant to Labor Law § 597 (4); an overpayment of Federal Pandemic Unemployment Compensation

(FPUC) benefits of \$15,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) benefits of

\$11,851.25 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, to charge the claimant with the recoverable overpayment of regular, FPUC, and PEUC benefits paid during the period March 23, 2020 through March 21, 2021 only.

In Appeal Board Nos. 627278, and 627279, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed December 27, 2022, insofar as they modified the initial determinations and reducing the claimant's right to receive future benefits by 296 effective days and charging

a civil penalty of \$6,696.74 on the basis that the claimant made willful misrepresentations to obtain benefits, reducing the number of forfeit penalty days to 184, and reducing the monetary penalty consistent with the decision that the claimant made no wilful misrepresentations when certifying after March 21, 2021.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: Prior to April 24, 2020, the claimant was employed by G4S Secure Solutions USA ("G4S") and Allstar Security ("Allstar"). The claimant's employment with Allstar ended under circumstances not at issue, and the claimant filed a claim for unemployment benefits on April 24, 2020; his claim was made effective March 16, 2020. Upon applying for benefits online, the claimant was presented with a screen shot asking if he wanted the claimant Handbook mailed to him. That page informed the claimant that the Handbook was also available online, that the claimant was responsible for reading and following the information provided in the Handbook, and that he will be held accountable for following the rules contained therein. In addition, when the claimant filed online he was presented with a screen that included, "9 Things You Must Do When Filing for Unemployment Insurance." These included, "Read your Claimant Handbook. It tells you about your rights and responsibilities while collecting UI . . . You can find the Handbook on our website." The claimant saw a tab for the Handbook on the Department's website, and a link to access it, but did not do so.

After his separation from employment with Allstar, the claimant remained employed on a full-time basis by G4S. Each week between the pay period ending March 29, 2020 and the pay period ending March 14, 2021, the claimant's gross weekly earnings exceeded \$504. During this same period the claimant worked between 32 and 56 hours a week. The claimant certified weekly for unemployment benefits from the week ending March 29, 2020 to the week ending March 14, 2021. Each week the claimant certified, he was asked how many days he had worked during the prior week and whether he had earned more than \$504. Each week, the claimant responded that he had worked "0" days, and had not earned more than \$504.

The claimant's claim expired on March 21, 2021, and he filed a subsequent claim for benefits online on March 26, 2021; his claim was made effective March 15, 2021. The claimant was still working full time for G4S at the time he filed his subsequent claim. As when the claimant filed his original claim, he was again presented with a screen asking whether he wanted a copy of the Claimant Handbook mailed to him, and the claimant responded "Yes." As was the case when the claimant applied for benefits in 2020, that screen informed the claimant that the Handbook was also available online, that the claimant was responsible for reading and following the information provided in the Handbook, and will be held accountable for following the rules contained therein. The Handbook in effect at the time the claimant filed his subsequent claim included a list of the ten most common issues that will negatively affect a claimant's benefits. Among these are, "work while collecting and not reporting it while certifying" and "make a false statement or withhold information from the Department of Labor." The Handbook defines work as "[A]ny activity that brings in or may bring in income . . ."

On March 29, 2021, the claimant called the Department of Labor and spoke with a representative. The claimant asked whether he could still certify for benefits if he earned more than \$504 a week; the representative responded that she was not sure, but did not think that would be an issue. The representative also told the claimant when he asked, that he could certify for benefits if he lost one job but was still working.

The representative did not tell the claimant how to answer certification questions, or tell him to provide inaccurate information to the Department when he certified weekly.

After filing this subsequent claim, the claimant certified weekly for benefits. From at least March 15, 2021 through at least September 12, 2021, the claimant was employed on a full-time basis by G4S. In all but one week during this period, the week of August 15, 2021, the claimant's gross weekly earnings exceeded \$504. During this same period, the claimant worked between 23 to 56 hours a week, with the 23 hour work-week being the week of August 15, 2021. From the week ending March 21, 2021 to the week ending September 12, 2021, the claimant certified weekly. When certifying each week, the claimant was asked how many days he had worked during the prior week, and whether he had earned more than \$504. Each week, the claimant responded that he had worked "0" days, and had not earned more than \$504. The claimant received the

regular, FPUC and PEUC benefits paid to him as a result of these certifications.

OPINION: There has been no appeal from the hearing decision insofar as it held that the claimant was not totally unemployed effective March 23, 2020 through March 21, 2021; that he received \$17,793.75 in regular unemployment benefits; \$15,000 in FPUC benefits, and \$11,851.25 in PEUC benefits; and that he made false statements, which were also wilful misrepresentations, each week he certified during the period of March 23, 2020 through March 21, 2021. Accordingly, the Board is bound by those findings.

Since the determinations at issue were mailed to the claimant on October 3, 2022, Labor Law Section 597(4) provides that there must be a finding a wilful misrepresentation for the Commissioner of Labor to have authority to issue determinations for any period prior to October 3, 2021. The hearing Judge found that the claimant made wilful misrepresentations when he certified for the March 23, 2020 through March 21, 2021 period. We find that those same statements made by the claimant when certifying in his subsequent benefit year were also false statements, willfully made, and that the Commissioner had authority to issue the initial determinations covering the period from March 21, 2021 through September 12, 2021.

We are not persuaded that the claimant's conversation with a Department representative on March 29, 2021 either prompted, or excused, the claimant's intentional failure to accurately report his earnings and days worked following that conversation. We note that the claimant certified in the same manner-inaccurately, and knowingly so-during his entire prior benefit year, though he does not allege that he received misinformation prior to doing so. Further, even if we were to credit the testimony regarding what the claimant was told when he spoke with a Department representative, it has not been established that the information received was inaccurate, since it is correct to say that a claimant may certify if he earns more than \$504 a week and/or is employed. Significantly, the claimant did not contend, must less establish, that the representative told him how to respond to particular certification questions, or to provide false information to the Department of Labor when certifying.

In addition, the Court has held that a claimant's "reliance on erroneous advice is not a defense to an intentional false statement." See, *Matter of Keegan*, 306 AD3d 740 (3rd Dept, 2003), in which the Court upheld the Board's

finding of wilful misrepresentation when the claimant, relying on misinformation from a Department of Labor representative, reported total unemployment although she was in a work-study program and lacked total unemployment.

Similarly, in the case now before us, the claimant's intentional false statements are not excused. We find that the claimant knew or should have known that he was required to accurately report his work and earnings when certifying for benefits. Having filed his original and subsequent claims online, the claimant had constructive notice of the existence of the Claimant Handbook, and his responsibility to read it and follow the instructions contained in it. Having received such notice, it was incumbent upon the claimant to access the

Handbook online, even if he did not receive a copy in the mail, and follow the instructions provided. The claimant acknowledged seeing the tab and link for the Handbook on the website, yet did not access it or read it as instructed.

Further, even if the claimant did not read the Handbook, we have held that the certification

questions regarding earnings and days worked are simple and straightforward, require no specialized legal knowledge or expertise to answer accurately, and are without reference to any particular employer or employment. Appeal Board No. 619060. Therefore it is not necessary for the claimant to have received or read the Handbook to be able to certify truthfully.

The claimant knew that he was working full time, yet certified that he had worked "0" days each week from March 21, 2021 through September 12, 2021. The claimant knew that his earnings exceeded \$504 in most weeks, yet certified each week that they did not. These false statements by the claimant for the period beginning March 21, 2021 through September 12, 2021 were not only false, but were intentional, willful misrepresentations. Accordingly, we find that the Commissioner of Labor had authority to issue the ineligibility and overpayment determination covering this period.

Since the claimant was employed full time, and/or was earning more than \$504 during each week from March 21, 2021 through September 12, 2021, he was not totally unemployed, and was not eligible to receive unemployment benefits under the Labor Law. Since the claimant was not eligible to receive benefits,

the regular unemployment, FPUC, and PEUC benefits he received during that period were overpaid. The overpaid federal benefits (FPUC and PEUC) are recoverable as a matter of law. The overpaid regular benefits are recoverable because the claimant made factually false statements as to days worked, weekly earnings, or both, when he certified weekly from March 21, 2021 through September 12, 2021. Since the claimant's false statements when certifying were also wilful misrepresentations, the forfeit penalties imposed were appropriate. The initial determinations are sustained in their entirety.

DECISION: In Appeal Board Nos. 627276, 627277, 627278, and 627279, the decisions of the Administrative Law Judge, insofar as appealed from, are reversed.

The initial determination, holding the claimant ineligible to receive benefits, effective March 23, 2020 through September 12, 2021, on the basis that the claimant was not totally unemployed, is sustained.

The initial determination, charging the claimant with an overpayment of \$17,793.75 in regular benefits recoverable pursuant to Labor Law § 597 (4); an

overpayment of FPUC benefits of \$15,000 recoverable pursuant to Section 2104 (f)(2) of the CARES Act of 2020; and an overpayment of PEUC benefits of \$11,851.25 recoverable pursuant to Section 2107 (e)(2) of the CARES Act of 2020, is sustained.

The initial determinations, reducing the claimant's right to receive future benefits by 296 effective days and charging a civil penalty of \$6,696.74, on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER